

**CITY OF NEWARK
DELAWARE**

**PLANNING COMMISSION
MEETING**

May 5, 2009

7:00 p.m.

Present at the 7:00 p.m. meeting were:

Chairman: James Bowman

Commissioners Present: Ralph Begleiter
Peggy Brown
Angela Dressel
Mary Lou McDowell
Rob Osborne
Kass Sheedy

Staff Present: Roy H. Lopata, Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

1. THE MINUTES OF THE APRIL 7, 2009 PLANNING COMMISSION MEETING.

Mr. Jim Bowman: Are there any additions or corrections to the minutes?

Ms. Kass Sheedy: On page 5, just below the middle of the page, Mr. Lopata states: "Yes that it fine." I think it should be "... that is fine."

On page 7, 4th paragraph, "There is no problem tying into the sewing." It should be "... tying into the sewer."

On page 18, 4th paragraph, "Cass" should be spelled "Kass."

Mr. Bowman: Are there any further additions or corrections from the Commission? Hearing none, the Chair will entertain a motion to accept the minutes as corrected.

MOTION BY DRESSEL, SECONDED BY BEGLEITER TO ACCEPT THE MINUTES OF THE APRIL 7, 2009 PLANNING COMMISSION AS CORRECTED.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

2. REVIEW AND CONSIDERATION OF THE REZONING FROM BL (BUSINESS LIMITED) TO BB (CENTRAL BUSINESS DISTRICT) OF THE .345 ACRE PROPERTIES AT 132 E. DELAWARE AVENUE, THE MAJOR SUBDIVISION OF THIS PROPERTY AND THE ADJOINING 1.128 ACRE PROPERTIES AT 123/129 E. MAIN STREET, AND A SPECIAL USE PERMIT, IN ORDER TO DEMOLISH THE EXISTING BUILDINGS ON THESE SITES AND CONSTRUCT THREE-STORY MIXED USE FACILITIES FOR 10,000 SQ. FT. OF FIRST FLOOR RETAIL/COMMERCIAL SPACE AND A TOTAL OF 14 UPPER FLOOR

APARTMENTS IN TWO NEW BUILDINGS. A TWO LEVEL PARKING DECK IS ALSO PROPOSED BETWEEN THE REAR PORTIONS OF THE PROPOSED NEW BUILDINGS.

Mr. Bowman: We have received a request for the project at 132 E. Delaware Avenue and 123/129 E. Main Street to be tabled for a future date. The Chair will entertain a motion to do so.

MOTION BY BEGLEITER, SECONDED BY OSBORNE TO TABLE THE 132 E. DELAWARE AVENUE, 123//129 E. MAIN STREET PROJECT TO A LATER DATE.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY.

1. REVIEW AND CONSIDERATION OF THE PARKING WAIVER AND SPECIAL USE PERMIT FOR THE CONVERSION OF THE EXISTING 1½ STORY BUILDING AT THE .078 ACRE PROPERTY AT 18 HAINES STREET TO A THREE-STORY MIXED USE COMMERCIAL FACILITY WITH APPROXIMATELY 2,700 SQ. FT. OF FIRST FLOOR OFFICE SPACE AND ONE UPPER FLOOR APARTMENT.

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“On March 26, 2009, the Planning and Development Department received applications from 13a Consultant Engineers for a special use permit and parking waiver for the property at 18 Haines Street. The applicants on behalf of the property owners – Paragon Design - are requesting a special use permit and an eight space parking waiver in order to convert the existing one and a half story office building to a three story commercial facility with two lower floors of offices and an upper floor apartment. The existing BB zoning at the site permits apartments with a Council granted special use permit.

Please see the attached 13a site plan, building elevation drawing and applicant’s supporting letter.

The Planning and Development Department’s report on the 18 Haines Street follows:

Project Description and Related Data

1. Location:

West side of Haines Street, approximately 175 feet south of the Haines and Main Streets intersection.

2. Size:

3,395 sq. ft. (.078 acres).

3. Existing Land Use:

One and one-half story residential-type building used for a sequence of commercial/office uses, including the most recent tenant – a computer services company.

4. Physical Condition at the Site:

18 Haines Street is a developed site containing an existing one and one-half story building. A small paved parking area is located to the rear of the building.

In terms of topography, the site is relatively level with a very slight slope from its highest points at the southwest corner of the property to Haines Street.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service and the site plan, the 18 Haines Street site consists of Matapeake – Sassafras – Urban Land Complex soil. The Natural Resources Conservation Service indicates that this is a disturbed soil that has been used for development purposes; no development limitations for the use proposed are indicated.

5. Planning and Zoning:

18 Haines Street is zoned BB. BB zoning permits the following:

- A. Retail and specialty stores.
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions.
- C. Restaurants, bakery and delicatessens.
- D. Banks and finance institutions.
- E. Offices for professional services and administrative activities.
- F. Personal service establishments.
- G. Studios for artists, designers, photographers, musicians, and sculptors.
- H. Repair and servicing, indoor and off-site of any article for sale, which is permitted in this district.
- I. Related indoor storage facilities as accessory uses with special requirements.
- J. Accessory uses and accessory buildings.
- K. Public parking garage and parking lot.
- L. Public transit facilities.
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations.
- N. Photo developing and finishing.

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area.
- B. Drive-in and curb service for other than eating establishments.
- C. Fast-food restaurants with special requirements.
- D. Motels and hotels.
- E. Commercial in-door recreation and in-door theaters.
- F. Instructional, business or trade schools.
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements.
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements.
- I. Police and fire stations.
- J. Library, museum and art gallery.
- K. Church or other place of worship.
- L. Restaurant, cafeteria style.
- M. Apartments, except on ground floor locations, with special requirements.
- N. Restaurants with alcoholic beverages, with special requirements.

Regarding BB zoning area requirements, other than off-street parking, the 18 Haines Street special use permit and parking waiver plan meets all applicable Zoning Code requirements. Based on the applicants' submittal, the 18 Haines Street plan requires an eight space parking waiver [not "11.5," as shown on Data Column item #13].

Regarding nearby properties, the land immediately to the north of the site is zoned BB and contains a shared easement that provides vehicular and pedestrian access to the rear of the 18 Haines Street site; access to the currently under construction covered parking area at the “Newark Square” mixed use development (the Newark Diner project); and access to the rear of the Main Street Florist and Crystal Concepts buildings, both fronting on E. Main Street. A BB zoned retail store (“Switch”) lies immediately south of 18 Haines Street. The parking area for the BB zoned 123/129 E. Main Street property lies west of the site. BB zoned office businesses are across Haines Street, east of the site.

Regarding comprehensive planning, Comprehensive Development Plan IV calls for “commercial (pedestrian oriented)” uses at the 18 Haines Street location. In addition, the Plan’s Downtown Economic Enhancement Strategy suggests, “Downtown Core District” land uses for the site. The Strategy describes this district as:

“ . . . an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of downtown economic environment; and potential significant negative impacts on nearby established businesses in residential neighborhoods. Beyond that and particularly to encourage owner occupancy downtown, the City may consider reducing the permitted density in the projects in this district for residential projects.”

BB District Off-Street Parking and Option Procedure

Please note, in this regard, that the BB district off-street parking waiver program, adopted by the City to encourage quality pedestrian oriented development downtown stipulates that the Planning Commission can reduce or waive the off-street parking standards in Zoning Code Section 32-45(a) after considering the following:

- “A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;
- C. Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will be detrimental to the public welfare, or injurious to property improvements in the vicinity;
- E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant and an existing or proposed use. In considering this subsection the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve;
- F. The Planning Commission shall consider the advice and recommendation of the Planning Director.

Please note also that the BB zoning parking waiver procedure permits City Council to review, modify, or deny Planning Commission approval, disapproval, or approval with conditions upon the recommendation of the Planning Director and/or the City Manager.”

Also regarding the parking waiver, our procedure specifies that applicants receiving such approvals must make a “payment in lieu of spaces” to the City to be used to improve parking downtown. The required payment, based on a recently updated estimate of the cost of construction of surface level parking spaces provided by the Public Works Department (\$5,833), is as follows:

<u>Number of Spaces</u>	<u>Payment Required</u>
Five (5)	\$ 1,458.25 (5% of cost)
Six to Twenty-five spaces (3)	<u>\$ 8,749.50 (50% of cost)</u>
Total:	\$10,207.75

Status of the Site Design

While development projects of the type and location under review here do not require building elevation drawings, the applicants have included a front elevation as part of their submittal. The Planning and Development Department believes this drawing will assist the Planning Commission in its review of the project.

In any case, the development plan submitted by the applicants calls for the demolition of the existing above ground portion of the building on the site and, essentially within the same footprint, the construction of a new three-story mixed use facility. A small three-space parking facility will be located to the rear of the building, accessible via the shared easement immediately north of the site.

Departmental Comments

The City’s Planning and Operating Departments have reviewed the 18 Haines Street special use permit and parking waiver plan and have the comments provided below. Where appropriate, the development plan should be revised prior to its review by City Council. The Departmental comments are as follows:

1. The Planning and Development Department notes that the proposed 18 Haines Street redevelopment plan conforms to the land use recommendations in Newark Comprehensive Development Plan IV, and the proposed mixed use for the site corresponds to the development pattern in the vicinity of the project.
2. As a condition of approval of the special use permit, and to limit the impact of the proposed apartment on downtown parking, the Planning and Development Department suggests that the dwelling units should be restricted to a maximum of four tenants and that residential tenants should be informed in writing that no off-street parking monthly permits will be made available by the City.
3. The Planning Department also suggests that the Planning Commission recommend as special use permit site design conditions the following:
 - The architectural design for the façade of the building should be carried out on all building elevations visible from public ways.
 - Storage areas, mechanical and all utility hardware shall be screened from view from all public ways and nearby properties in a manner **consistent** with the proposed architectural design.
4. The Public Works Department indicates the following:
 - The proposed porch must be relocated out of the Haines Street right-of-

way.

- A proposed lines and grades plan is required prior to the plan's review by City Council.
- Note #10 should be revised to refer to the most current City of Newark "Detail Standards and Specifications;" the reference to DelDOT should be deleted.
- Handicap parking should be shown as per Note #16.
- An erosion and sediment control permit will be required through the building permit process.
- The applicant should review with the Department issues regarding roof drainage and the storm drainage system.
- Detail of the proposed paving cross sections should be provided.

5. The Electric Department indicates the following:

- Electric service is available from Haines Street.
- No trees growing 18 feet in height can be planted under power lines on Haines Street.
- The required fee per service meter will be calculated depending upon the proposed load of the electric service.
- Prior to the plan's review by City Council, the applicant should review with the Electric Department requirements for vertical and horizontal clearance from power lines.

6. The Building Department indicates the following:

- The building must be redeveloped in accordance with the International Building Code.
- All new construction at the site will be required to be sprinklered.

Recommendation

Because the proposed 18 Haines Street project conforms to Newark Comprehensive Development Plan IV, because the plan corresponds to the land use development pattern in the immediate vicinity of the site, and because the project appears to be an attractive addition to the location, **the Planning and Development Department suggests the following:**

- A. That the Planning Commission approve the requested 18 Haines Street parking waiver as shown on the 13a site plan, dated March 26, 2009, with the conditions in this report; and,**
- B. That the Planning Commission recommend that City Council approve the special use permit for the proposed apartment at 18 Haines Street as shown on the 13a site plan, dated March 26, 2009, with the conditions in this report."**

I might add, I don't have this in the report but, I think it is imperative in these economic times to encourage people who want to invest in our downtown, and this is another example of a tenant who is going to be occupying the building. I think that that is the kind of user we certainly want to encourage. They not only will have their own

business downtown but they will shop, eat and help other businesses along Main Street. So, I think this is the type of project we certainly should be encouraging.

[Secretary's Note: The applicants, Planning Commissioners and the public refer to visuals brought by the applicant for presentation to the Planning Commission].

Mr. Bowman: Are there any initial questions for Roy from the members of the Commission?

Ms. Angela Dressel: Roy, you started to address my one concern with the right-of-way and I wasn't sure whether the building needed to be moved back to accomplish that.

Mr. Lopata: You probably wouldn't want to move the building back because there are few enough parking spaces as it is. So, it would be a matter of making the front smaller or resolving this right-of-way issue. I am hopeful that they can resolve it and figure out why the right-of-way lines don't line up. It may just be a surveying glitch that has nothing to do with the project. If you look at the plan for the Newark Diner, that building is in the right place but it's on the same line. How could that be? Sometimes the points don't meet. We may need to send Mason and Dixon out to resolve this problem.

Mr. Bowman: The old fashion way with a chain.

Mr. Lopata: Something is wrong and I am not sure what it is.

Mr. Bowman: Are there any other questions? If not, the applicants are here.

Mr. Ed Ide: Good evening. My name is Ed Ide. I am president of i3a Consulting Engineers and Construction Managers.

By way of introductions I have Rob and Donna Paraskewich who are the owners of Paragon Design, as well as Wayne Clendaniel, registered architect with Fearn and Clendaniel here today.

Rob and Donna started Paragon Design back in 2001. Their present location is 77 E. Main Street. They currently lease that space, as Mr. Lopata had mentioned earlier. They are a graphics design company. Some of the clients that they have are Delaware State University, as well as Verizon Wireless. They certainly are a viable company that is positioned right in downtown Newark. They currently have 10 to 12 employees of with two of those employees rotating on an every other day basis. Two to four of those employees also carpool to the site. If I am not mistaken, the owners currently purchase two to three parking spaces from the City of Newark. The hours of operation are typically 8:00 a.m. to 5:00 p.m. Very rarely will they have walk-in customers. Most of the work that they do with their clients is done remotely. So, when the staff goes to the work site, staff typically stays there, and they really don't have clients come to visit them. On occasion they will but most of the time they don't.

The existing building is located on 18 Haines Street on a .078 acre parcel. The site was previously owned by Mike and Julie Linette who owned and operated ZeroWait. As Mr. Lopata said, it is just to the south of the existing diner building that is currently under construction. The existing building is a 1 1/2 story building that served at the time 15 to 18 people. That site currently has four parking spaces. It certainly has had its challenges. Rob and Donna had purchased the property from the Linettes around January or February of this year. We are here before you to seek approval for the special use permit as well as a parking waiver.

The site, as Mr. Lopata said, is currently zoned BB which does permit us to put office space as well as an apartment space there under the special use permit. Looking at the site plan, which is on the next page of the booklets we provided, the areas are shaded in red are the building proper. The tan colored portion of what you see there, on the front of that is an open porch with a roof structure over top of it. The rear of that shows an ADA accessible ramp with a set steps included. Then there are three parking spaces that are shown in grey to the rear of that building. Some site improvements are planned

which will include a new water service for a fully functioning fire suppression system. There is a new electric service planned off of the existing pole that is located directly in front of the building. We worked with Mr. Rick Vitelli with the Electric Department to determine that it can go underground and that we do have ample capacity there. The new sanitary sewer stub has been placed through a joint effort with Roy Simonson and his group that was coupled with an effort with the diner contractors that are working there now putting in the new sanitary sewer for that project.

We are planning three parking spaces towards the rear of the project. Parking will only be utilized for staff personnel and there will be deed restrictions drafted for any of the tenants letting them know they will not have onsite parking for their use. As mentioned before, the business is rarely visited by outside clients. There is typical delivery on a daily basis and it is mostly by FedEx, UPS as well as Staples.

Between our site as well as the diner, there is a 24 ft. alley way that is utilized by three different ownerships; one the Paraskewichs, secondly the Ladutkos, as well as the Tsionas family that owns the diner.

Looking at the new floor plan, the first floor plan consists primarily of office space. If you look, in general there are walled off sections for privacy. There is conference space, a main office, rest rooms, as well as shipping and receiving. The second floor, again, is primarily for office space. It is more of an open studio type affect. There are rest rooms additionally on the second floor, and we are planning a kitchenette for that space as well. The third floor which represents approximately 1,100 square feet will be utilized for apartments. We have two bedrooms which will be shared by two tenants each. There are two rest rooms, two bathrooms, one with a shower and one with a tub, a completed kitchen, a dining room as well as a living space. The current Code requires that we have at least 800 sq. ft. for the apartment; we are providing 1,100 sq. ft. under the current plan.

Looking at the elevations, there were several options that we looked at for consideration. One was to leave the story and a half building as it was and to try to construct on top of the walls which held the second floor or the half story. Looking at safety and constructability issues we opted not to go that direction. The other direction was to completely remove the entire structure, including the basement, but looking at the tightness of the site and constructability issues that the current site is under, we felt that wasn't a viable option as well because of the excavation requirements with that. So, we looked at demo or razing the building down to the basement foundations starting basically at grade and then building from that and leaving the basement intact.

As you can see, we have primarily a brick structure. There is cementitious siding that we are using to complement that. The overall three story building is just under 35 ft. in height, which is the Code requirement. The windows are a vinyl clad, double hung, which will be operable. The roof structure is going to be a low sloping roof hidden by a small parapet wall. It is our intent to place the mechanical systems on the roof to try to get them off the ground and hidden by the parapet area. The gabled roof systems that you see there are shown as a metal roof, again, colors to complement the windows as well as the brick and the cementitious material.

The top elevation is what you would see if you are standing on Haines Street looking directly at the building. The side elevation is what you would see if you are standing at the diner's parking garage looking at the side of the building. We have the porch shown on the front. The porch serves a couple of functions: first, for the staff to go out on Haines Street and eat lunch; secondly, they can hold conferences or small meetings out there; the other is aesthetic issue. The previous owners prior to ZeroWait, the building actually had a porch on the front. We are trying to get that look back on Haines Street. As you can see, it is an aesthetically pleasing looking building and we would just hate to have the right-of-way work out to where we are correct and have to do something with that. So, we are hoping that it works out, in fact, is not what it shows to be.

We do have some landscaping shown on there. There is some landscaping shown

around the side and front. To the rear of the building we do show an ADA compliant ramp as well that attaches directly next to the parking areas.

We concur with all of the Planning Department comments, again, with the exception that we request permission to work with Mr. Lopata and Mr. Lapointe on the right-of-way issues to try to get that rectified. We do have two different surveyors working on that – Zebley as well as Pelsa – to try to get that figured out.

Mr. Bowman: Does anyone from the Commission have questions for the applicant?

Ms. Sheedy: I have two questions. You mentioned the alleyway between this property and the diner property; but, based on your plan, the only way to get into the parking places is with a derrick as far as I can tell.

Mr. Lopata: That alleyway is a shared easement.

Ms. Sheedy: There is a legal agreement in place for that easement?

Mr. Lopata: They, ZeroWait and the previous occupants had not only rights to that, but as Ed mentioned, it is shared with Crystal Concepts and the Main Street Florist.

Ms. Sheedy: My question was, is there a legal agreement in place and everything is good?

Mr. Lopata: Yes. We couldn't get this far without it.

Ms. Sheedy: My second question is, I see the issue with the porch, but when I looked at the building, is the proposed porch going to come out further onto the sidewalk than the current Haines Street foundation of the building or is the current foundation of the building on Haines the outer limit of the entire building, including the porch?

Mr. Ide: The intent was to build exactly in the same footprint of the existing building and the existing building runs to the sidewalk on Haines Street.

Ms. Sheedy: But, that is the outer limit of the proposed porch?

Mr. Ide: That is correct.

Mr. Begleiter: Can I ask you to look at the lower elevation on that diagram that you have up there right now. The stairway that serves both the second story and the third story is that windowless section right there. Okay, so that is an interior stairway and it's accessed by a ramp or by four steps from the parking lot up to the building?

Mr. Ide: By both. There is a ramp that leads out to the alleyway and then there is a set of steps that come off of the parking lot in the rear of that. There is a set of steps that you can walk up to the first floor elevation. There is approximately three feet between the paved area and the first floor of the existing building. So we had to create steps (it is just not shown in this elevation) and a ramp at the rear of the building.

Mr. Begleiter: The three feet are required for aesthetic reasons or because the porch happens to be three feet high?

Mr. Ide: That happens to be where the elevation is. We try to maintain any sort of elevation in the basement. We had to keep that elevation to the finished floor.

Mr. Begleiter: Do you plan to use the basement?

Mr. Ide: We plan to use it as storage.

Mr. Begleiter: The reason I was asking about the stairway and the ramp is it looks to me as though it might be possible to do away with the one planting beneath the first window and have the ramp wrap around the side of the building rather than being an incursion

into the parking area. Did you look at all into the possibility of squeezing a fourth space in there given the little half a space you have at the other end?

Mr. Ide: Absolutely we did. The side of the building is literally the side of the 24 foot easement. So, if we try to wrap that ramp around, it would be out in the alleyway.

Mr. Lopata: They can't block that.

Mr. Begleiter: You have a round plant right there. Couldn't that be the entrance?

Mr. Ide: Right beside the little tree that is there, that is the entrance to the ramp area. We looked at trying to wrap it around in a different configuration. Honestly, we would like to try to do away with the ramp if we could. Like I said, there are no clients, really, that come to the site. The ramp is a Code requirement.

Mr. Begleiter: Did you look at the possibility of moving one of the parking spaces closer to the alleyway since the total access is going to be from the alleyway anyway and doing the ramp along the south side of the property, perhaps enabling enough extra space there to squeeze another parking space in there. Do you see what I am getting at?

Mr. Ide: I think so. That would take the ramp in the westerly direction?

Mr. Begleiter: It would take the ramp in the westerly direction roughly parallel with the green space that you have located there. The parking place closest to the house would not extend all the way to the south property line. It would extend only as far as the ramp. Actually, the second parking space could do the same thing and you could have the ramp be a straight ramp going way out. I don't know if that would help. I don't have the measurements and I don't have the skill to do that, but I wonder whether it might be worth taking a good hard look at whether there is some way to revise the entrance to the rear of the building and the stairways and the ramps and the parking spaces so as to accomplish the extra space?

Mr. Ide: We did look at putting the ramp towards the rear of those parking spaces and for any folks that were coming from the diner if they were in a wheelchair trying to get them back behind the four parking spaces and back along the green area towards the rear of the property would be difficult to get those folks squeezed in there. Short of moving the ramp or losing the ramp, we really can't get the fourth parking space in there.

Mr. Begleiter: I am going to drop it for now, but I think you ought to take a good hard look at that again. It seems to me that that last parking space that isn't a parking space could be some kind of access way and then you could have the ramp go the entire length of the front of the parking spaces – maybe even with some plantings along the side. I don't know if that would help anything, but I think it is worth taking another look at it.

A quick question about the electric utility in the front. Your statement differs a little with your drawing and I just want to figure out which one is right. There are currently two utility poles in front of the existing building – another one of the fine examples of outstanding planning on the part of the City's utility division. That is historic and there is nothing that can be done about that. Your drawing says that there is going to be a new pole installed, but your statement said that all it is going to be is another wire from the existing two poles to your building. Which is it?

Mr. Ide: The two poles that are there, one of those poles will go away. The actual install of the one pole was for the diner. I was part of the diner project originally and was instrumental in getting the wires buried at this corner towards Main Street. In doing so, the pole that is currently in front – if you look at the existing building pictures – one of those poles will go away. And in time, what they will do is take the aerial wires that go from that corner, they will go across Haines Street to pick up the buildings across. There is a series of wires that go from the pole to the left on the picture that run aerial to the Paraskewich's building and then run down the side of the wall. What Rick Vitelli told us that we could do was go to the newly installed pole because the other one would be gone and come down the pole and then go underground and tie into our building. Ideally, we

would love for that pole to go away. I haven't stopped my work with Rick Vitelli to see if we can continue that trend down Haines Street.

Mr. Begleiter: I think that is a fantastic idea. I congratulate you and the Electric Department on the decision to remove the extra pole and urge you to keep going in that direction. I think this is a good time to do it especially if you are coming before the City and talking about the aesthetics of the porch and the beautiful view down Haines Street and so on. And, I am talking about removing the second pole, too.

Ms. Dressel: And putting the wires underground.

Mr. Ide: This gentleman cringed when I asked him to show the pole and the wires on his ...

Mr. Begleiter: I am delighted to hear that. I am delighted to know that he cringed. That is exactly why we installed that new requirement to require that the poles be shown.

Mr. Ide: We were really close to trying to get wires buried on Main Street, but I wasn't able to get that far.

Mr. Begleiter: On the side elevation that is in front of us, you show some plantings there. A moment ago you said that the 24 foot property line comes right to the very edge of the right-of-way. So, I would like to know where those plantings are going to be or whether they are just there to make the drawing look nice.

Mr. Ide: Do you want the truth?

Mr. Begleiter: Of course I want the truth, the whole truth and nothing but the truth.

Mr. Ide: They are there just to make the drawing look nice. I see your point and they probably should be taken off.

Mr. Begleiter: Actually, I don't think they should have been taken off. What I think should happen is that you probably, to fulfill the desires as stated and the desires of the City, I think it would be a really nice thing to have those plantings there. So, I think what should happen is that the building ought to shrink a little bit. I understand that your rationale for keeping it on the existing footprint is that the minute that you make one single change in the footprint, then you open yourselves up to a whole lot of revisions in the shape and scope of the building. Maybe that is something we can leave for when the right-of-way issue is resolved. If the right-of-way issue requires you to remove the porch, then you are going to have to full around with the footprint anyway and maybe that is an option to exercise that.

Roy, is there any restriction in the Code for side yard on property like this?

Mr. Lopata: Not in BB unless it is next to residential, which it is not.

Mr. Begleiter: It is under residential. It is not next to it. That doesn't matter.

Mr. Lopata: BB is not "residential."

Mr. Begleiter: Oh, next to residential zoning because we have residential at the diner.

Mr. Lopata: It is all zoned BB.

Mr. Begleiter: We have residential there and we have residential here, but that doesn't matter.

Mr. Lopata: It is considered a downtown-type zone where you can build to the property line.

Mr. Begleiter: That is why I was asking the question. Just a comment on the same

footprint issue. The developer and Roy, you both stated that essentially this project will be maintained in the same footprint, but just as a matter of record, the current footprint doesn't appear to meet the current Code just as a lot of other things about the building currently don't meet the current Code as the developer himself noted. So, if it doesn't, and if the right-of-way issue has to be resolved then it really does open up the question of whether other aspects of the Code can also be applied to this project.

Ms. Peggy Brown: Access to the apartment is inside. Correct?

Mr. Ide: Yes.

Ms. Brown: What kind of lighting and security are you providing for the tenants of the third floor apartment?

Mr. Ide: On the exterior there will be lights that light the alleyway. The reason we enclosed the stair tower is for safety, number one. We are planning car access to the stair tower for the tenants as well as all the employees, and then the stair tower will be completely lit on each level.

Ms. Brown: Outside also?

Mr. Ide: Yes, the outside will have wall sconces that you see on the side of the building and then wall packs on the back which will shine into the parking areas.

Ms. Brown: The second thing I had was, how are you going to control the parking lot in the evening and the weekends?

Mr. Ide: From a tenant standpoint?

Ms. Brown: Tenants or people just jetting in there.

Mr. Ide: From a tenant standpoint, the owners will control it through deed restrictions. If they don't comply then they don't comply with the deed restriction then we will have to take care of that at the time.

Mr. Lopata: One thing we don't have to encourage property owners downtown to do is tow. They do plenty of that.

Ms. Brown: But, it is behind the building and unless they happen to be driving by. . .

Mr. Lopata: Well, because the owners are going to want to get in and out of their property. I am sure they will treat this like the do now at Charlie B. Travels because they are already in a building like this. You don't see people parking there who are not supposed to be. So, they, typically, get a service to check their site.

Ms. Brown: Will you have somebody checking the lot?

Mr. Paraskewich: I plan to have some sort of surveillance up there as well.

Mr. Lopata: With three parking spaces it is not the issue that the larger lots have. Typically what happens is if the property owner shows up on Monday morning and someone is in their space that is when they decide that they are going to have the lot patrolled. Hopefully, you won't have that problem, but you could.

Ms. Brown: I know Chris Herman has had trouble with people jetting into her lot on the weekends.

Mr. Ide: Having the tenants there every day of the week I'm sure will be a plus to notify the Paraskewiches that somebody is parking there that shouldn't be parking there.

Mr. Lopata: They won't be happy if someone else's parking space they can't use.

Ms. Brown: My other comment is, I like the use of this siding as opposed to just all brick because we seem to be on a brick run downtown. It really sort of breaks it up. And, the cement siding is a fire suppressant material. I know some other places that have used it and it is supposed to last forever.

Ms. Dressel: I just wanted to comment. I really liked the idea that you went with the footprint and that you did have a very nice design and took advantage of some of the niches that were part of the footprint. I do agree with Ralph, though, that it would be nice if we could get a little bit of space in there to put some greenery. I really like your porch idea. I hope that that is going to be able to be worked out with the right-of-way. I'm still not sure that I understand the access with your ramp. This picture actually helps. So, it is going out to the right-of-way to the alley. But, I thought that up at the front we couldn't have the steps going out to the alley.

Mr. Lopata: That is a Public Works issue because of the right-of-way problem.

Ms. Dressel: The right-of-way from the front but not the alleyway. It doesn't have anything to do with the alleyway.

Mr. Lopata: It is not into the alleyway. The alley is an accessway.

Mr. Ide: It is a vehicular and pedestrian easement.

Mr. Lopata: It is a thoroughfare for people to walk and ride. Two different things. You can't build in an easement. You can access an easement.

Mr. Begleiter: You can walk to an easement? It's not just for driving access?

Mr. Lopata: Not in this case. It is just like a sidewalk.

Ms. Dressel: I thought when you were talking about the front porch and the reason the ramp or stairs couldn't go out was because it would go into the easement.

Mr. Lopata: No. You are not supposed to build on a right-of-way. We didn't know that there was a problem until the plan came in. We will try to get that resolved.

Mr. Osborne: First of all, I like the design overall. I think it is an attractive redevelopment of an existing space. In recent projects we have had the observation that builders are using thin brick vs. traditional thick brick. Is this thin brick or real brick?

Mr. Ide: It is real brick. In general, the thin brick does not look good on large spans and we have a large enough span that we would just rather not use it.

Ms. Dressel: I think that if there is any way to change the ramping so that you could get one more space in there, which would be a great addition to the building and to the area. It might even make it look a little bit safer. Being a parent of an upcoming college student, I keep thinking about the safety aspect of these apartments that are on Main Street and having two daughters -- is this going to be a safe place for the college kids to get into? It seems to me that if you just change that a little bit to have it going into the parking lot and then having your steps. I think your steps could then go towards the easement area that you would be able to get another parking spot in there. Looking at the drawings, it seems like that might be possible. I like the idea that you have all of the lights on the sides of the building. It looks like there are three on the side where there are the four windows, but it also doesn't look like there are any lights on those next two sections. Hopefully, you have some lighting there. Again, thinking of the safety of your tenants and the business people. And I really like that tin roof idea.

Mr. Bowman: I am just adding a comment to the ramp issue. One of the things that the Commission has to keep in mind is that an ADA compliant ramp is not the easiest thing in the world to build because of the height and run requirements. So, they can eat up a tremendous amount of space. With the location that they have -- and probably have tried other combinations -- those things are a pain to fit into a building particularly when you

have tight tolerances to start with.

Ms. Dressel: I agree with that, but I didn't understand Ralph's idea until I drew it out.

Mr. Bowman: At this point, I will invite the members of the public who would like to comment on this project to speak.

Mrs. White: 103 Radcliffe Drive. First of all, I would like to say according the applicant's elevations, this appears to be a very attractive building and pleasing to the eye. I like the combination of the brick and frame; the window design; the porch, which I hope will stay; and the roof design. I am very pleased with it and I would like to commend the architect on what appears to be a particularly attractive building. Plus, being next door to the rising three story diner project, I think this acceptably fits in because it is immediately next door to it.

I was pleased to see that the blueprint shows that from the new pole that is going to be put in that the electric line to the building itself will be underground. That is very good and certainly any more conversations between the Electric Department and the developer, in terms of additional possibilities with the electric, are to be encouraged.

Fourthly, the applicant's letter says that the tenant of both the first and second floor will be a professional graphic design company which I now realize is the owner of the building, which I didn't realize. That is very refreshing be it the owner or be it a tenant that is known because too often office or retail space is built with no tenant in mind. Then after it is built, the tenant can't be found and this new office space sits empty. So, I am so happy that this is somebody currently in Newark but it will be occupied. The building is being planned is for those, I've learned tonight, who are the owners.

Having heard the presentation, questions and answers, I would like to commend the Mr. Ide for an excellent presentation and answering very exactly all the questions and knowing the project inside and out. The Planning Commission has sometimes been treated to representatives of a developer who, actually, didn't know every last detail, and I am very pleased to hear tonight's presentation.

I had noted in the Planning and Development Department report that development plans submitted by the applicant calls for the demolition of the existing above ground portion, and yet the March 25th letter talked about, "Our plan is to completely renovate the building, add a second floor, add a third floor and redo the façade." I presume that the remarks have changed to demolishing the building all the way to the foundation. Now, I understand. This is a minor little thing that is actually not important to the approval, but the earlier occupant was not a dentist but an ophthalmologist's office. At least I don't ever know of a dentist being there. It was Dr. Hart's office for many years.

Mr. Lopata: Before ZeroWait?

Mrs. White: This property – 18 Haines Street – to my knowledge (I can be corrected) was never a dentist that lived there, it was an ophthalmologist's office.

Mr. Lopata: The previous use we are talking about there was a computer company.

Mrs. White: I had a question about the parking. The building footprint is 2,700 sq. ft. and the parking was calculated by dividing 300 sq. ft. into the first floor 2,700 sq. ft. and getting 9 parking places for that level. But, you also have the second level of which you also have to count 2,700 sq. ft. more, so that would be 9. I understand it. I can be corrected if my understanding is wrong. In other words, you have to count the parking for each level of office space. So, the first floor is 2,700. That comes out to 9. The second floor is 2,700. That comes out to 9 more. And then the third floor is a two bedroom apartment which is 2. From my understanding, it is 9 + 9 + 2 which is 20 and you have three parking places and that would leave a parking waiver of 17. Now if I misunderstand that, anybody here or anybody up there can correct my understanding.

Mr. Lopata: The parking calculation is based on the total square footage; the “footprint” square footage shown of 2,700 sq. ft is my mistake in the report.

Mr. Ide: The actual “footprint square footage” is around 1,350 sq. ft. If you take the two – first floor and second floor – that totals 2,700 sq. ft., divide that by 300 sq. ft. per parking space, yielding the 9.

Mrs. White: I was taking this from the size of the property and from the Planning Department report which said the footprint was 2,700 sq. ft.

Mr. Lopata: I know. That was my mistake. It has to be fixed in the report.

Mrs. White: I had to take it from what was in the printed version. That answers the question, so you are still at an 8 parking spot waiver.

I had a question about the handicap parking. When you only have three spaces is any applicant in this situation required to have one of the three be a handicap parking, in light of the fact that these are not customers are coming in?

Mr. Lopata: That is my understanding.

Mrs. White: You still would need to have one of the three.

Mr. Lopata: It is not a Zoning Code requirement; it is a Building Code requirement.

Mrs. White: Even if you only have two. Even if you only one parking place?

Mr. Lopata: I don’t know what the minimum is.

Mrs. White: Even though I understand and I am all for handicap parking, it strikes me that this handicap one will rarely be used and, therefore, effectively, it comes down to two.

Mr. Lopata: Whatever the Code requirement is, that is what they have to put in.

Mrs. White: At least I think it should be looked at.

It was mentioned in the Planning Department report under the Planning Department’s comments that, “The residential tenants should be informed that no off-street parking monthly permits will be made available to them.” Would that be a useful thing to put in the agreement that is eventually made between the City and the applicant?

Mr. Lopata: We do that, Jean. We do it automatically.

Mrs. White: They were talking about a deed restriction but another way to think of it is in the lease that there is no parking available for the tenants.

Mr. Lopata: That is what we will put in the subdivision agreement, which is what we do routinely.

Mrs. White: This is just a question although I don’t know that it would be used since there are rarely clients that would come. In light of the fact the parking waiver is going to be given would the business be required to validate whatever the few clients that would come in. So, validation was not talked about in the whole report.

Mr. Lopata: Because of the nature of the business, we didn’t think that was necessary to require because it is not a high turnover operation.

Mrs. White: Apparently it wouldn’t be used very often. It would be easy enough to do.

Mr. Lopata: It is a cost to them. It is not free.

Mrs. White: I wondered is there only one staircase or are there two to the top floor

apartment? And, are two required?

Mr. Lopata: One means of egress for the one apartment.

Mrs. White: Why is it only one?

Mr. Bowman: It is a fully sprinklered building.

Mrs. White: I thought it might be that but I wanted to hear you say it. I also support, hopefully, keeping the porch if the right-of-way can be resolved because I think it adds very beautifully to the whole building.

I was curious if the cement fiber siding, which I am very glad you are using, will it be using (inaudible) or have you decided?

Mr. Ide: We have not decided but it will be a cementitious material.

Mrs. White: It is a very good thing and I second what Ms. Brown has said. You have shown on your side elevation the building which is the side where the diner is and I presume that the other side – the side next to the skateboard place – is going to be likewise looking like that. Is that fair to say?

Mr. Ide: That is correct.

Mrs. White: Actually, it will be more visible since the diner project is a three story building and will partly block it, but the other side we have a one and a half story building, it would be more noticeable to people coming down the street.

Of course, I always like trees and greenery, but I actually like this building and I think it is important since it is already is pretty narrow. Since it is going to come to Council, just for projecting what you are really doing, it might be useful to remove the greenery that makes it look like it is going to be there but it is not going to be there. In this particular case have not a problem with that.

Mr. Bowman: It has been addressed.

Mrs. White: Those are my comments. I commend the owner, the engineer, the architect. It is a good project.

Mr. Chris Locke: I own 129 E. Main Street. I adjoin this property. I just want to commend the owners for the project they are proposing and I hope the Planning Commission supports it.

Mr. Bowman: Any further questions or comments from members of the Commission?

Mr. Begleiter: The business about buying the parking spaces from the City, even though that is not being done here, if it isn't being done now because of the nature of the current . . .

Mr. Lopata: That was validation I was talking about.

Mr. Begleiter: Validation. Okay, but it is buying validation, right?

Mr. Lopata: You buy validation coupons and give them to customers. We require that for many of our parking waiver projects.

Mr. Begleiter: What I am getting at is, even if they don't do it now and it is not required, what happens when next week a new business moves into the same building that has a different function. Would this be grandfathered in?

Mr. Lopata: It would run with the office use, but if the use changes we would go in and tell them they should validate.

Mr. Begleiter: So, that could be done. It's not going to be a grandfathered situation. Okay.

Another technical question -- Roy, the plan shows that the existing house on the property is 3.8 or 3.9 feet over the property line. Is that the same thing technically and legally as being over the right-of-way line or is there some distinction that we need to worry about here between being in the right-of-way and being over the property line.

Mr. Ide: It is the same line. It is the right-of-way that identifies Haines Street, which is the property line.

MOTION BY SHEEDY, SECONDED BY DRESSEL, THAT THE PLANNING COMMISSION TAKES THE FOLLOWING ACTIONS:

- A. APPROVES THE REQUESTED 18 HAINES STREET PARKING WAIVER AS SHOWN ON THE I3A SITE PLAN, DATED MARCH 26, 2009, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT; AND,
- B. RECOMMENDS THAT CITY COUNCIL APPROVE THE SPECIAL USE PERMIT FOR THE PROPOSED APARTMENT AT 18 HAINES STREET AS SHOWN ON THE I3A SITE PLAN, DATED MARCH 26, 2009, WITH THE CONDITIONS IN THIS REPORT.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

There being no further business, the Planning Commission meeting adjourned at 8:00 p.m.

Respectfully Submitted,

Elizabeth Dowell
Secretary, Planning Commission